

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF VERIFIED PETITION OF)
TELSCAPE COMMUNICATIONS, INC. FOR)
AUTHORITY TO PROVIDE LOCAL)
EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES WITHIN)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE04091061

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated September 27, 2004, Telscape Communications, Inc. ("Petitioner" or "Telscape") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based Competitive Local Exchange ("CLE"), exchange access and intrastate interexchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Telscape is a privately held corporation organized under the laws of the State of Delaware. TSG Capital Fund III, LP was organized in the State of Delaware as a limited partnership and, its Officers and designated employees collectively own 99% and less than 1% ownership interest in Telscape, respectively. TSG Capital Fund III, LP is owned by 24 limited partners and managed by TSG Capital Group, LLC the investment company. Telscape does not own subsidiaries nor is it an affiliate of any other entities. Telscape was initially organized on June 19, 2001, as TCP Acquisition, Inc. On October 30, 2001, the company filed a Certificate of Amendment to the Certificate of Incorporation in order to change its corporate legal name to Telscape. Petitioner's principal offices are located at 606 East Huntington Drive, Monrovia, California 91016.

Petitioner has submitted copies of its Articles of Incorporation, Certificate of Good Standing and Certificate of Amendment to its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to operate as a Foreign Corporation. According to the Petition, Telscape was formed to provide resold and facilities-based CLE, exchange access and intrastate interexchange telecommunications services within the State of New Jersey. Petitioner states that currently, it is authorized to provide facilities-based and resold CLE services in the State of Arizona,

California, Florida, Illinois, Nevada and Texas, it is providing the above stated services in the State of California, Illinois, Nevada and Texas and that it has an application for the aforesaid service including resold intrastate interexchange pending in the State of New York. Petitioner states that it has not been denied authority to provide telecommunications services nor has its authority been revoked in any jurisdiction and that it has not been the subject of any civil or criminal proceedings in any jurisdiction. Petitioner has not yet commenced negotiations for an interconnection agreement with any incumbent local exchange carrier and it has elected to defer such negotiations until its petition for authority is approved by the Board.

Petitioner seeks authority to provide resold and facilities-based CLE, exchange access and intrastate interexchange telecommunications services to residential customers with a concentration on Hispanic and low-income subscribers and to small and medium sized commercial customers throughout the State of New Jersey. Petitioner states that its facilities-based CLE services will initially utilize its underlying carrier's unbundled network element platform leased or purchased from a facilities-based New Jersey certificated provider, supplemented with resold services. Petitioner plans to deploy facilities, including switching equipment and transport facilities, consistent with its anticipated growth in the New Jersey market and then plans to establish collocations in incumbent carrier wire centers as quickly as its customer base grows to a size sufficient to economically sustain facilities-based service. Petitioner further states that as collocation at a wire center is established, it will install facilities that will enable it to transmit calls over a leased ATM network for switching using its existing DMS 500 California switches which will provide end users with all of the features and functionality now available to customers served in California. Petitioner's customer service representatives are available twenty-four hours a day to address service, billing and repair complaints. Petitioner maintains a toll-free number for its customer service inquiries. Per Docket No. TT04101149, Petitioner has filed a proposed tariff with the Board.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Monrovia, California. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Telscape states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to Telscape, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Telscape's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board.

The Board HEREBY ORDERS that:

- 1) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 2) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records

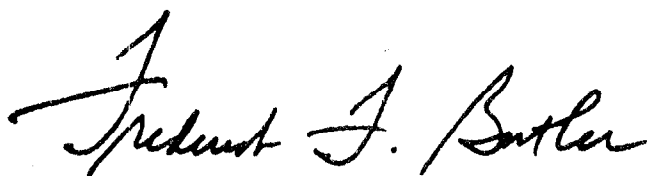
upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 12/9/04

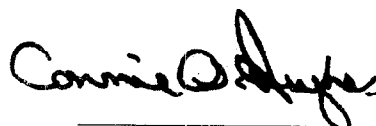
BOARD OF PUBLIC UTILITIES
BY:



JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER

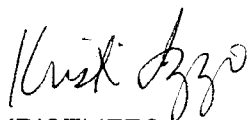


CONNIE O. HUGHES
COMMISSIONER



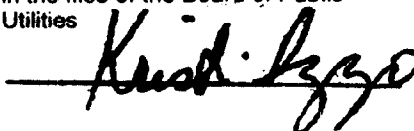
JACK ALTER
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



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FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE
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SERVICE LIST

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